IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.2450 OF 2004

ALONG WITH

NOTICE OF MOTION NO. 2453 OF 2004

IN

M.J.SUIT NO. 1633 OF 1993

PASCAL WILLIAM CARLOS ... PETITIONER

VERSUS

MACXI VINNIE CARLOS nee

MACXO VINNIE FERNANDES ... RESPONDENT

Mr. R.r.Salvi i/b. Ms. S.Talkute for Plaintiff.

Ms. seema Sarnaik for Defendant No.5.

CORAM: S.K.SHAH,J.

DATE : 3rd December, 2004.

P.C.

1. Notice of Motion No.2450 of 2004 is for maintenance, whereas the other Notice of Motion is for return of the property. Both these Notices of Motion

are taken out by the Respondent.

2. The learned Counsel for the Respondent has pointed out the order passed by the Family Court on 5.2.2004 whereby the Respondent's application for return of property was not entertained by the Family Court and the Respondent was directed to approach this Court as the matter was disposed of by this Court. Therefore, the Respondent has filed both these Notices of Motion in this Court.

3. What is pending in High Court is M.J.Suit No.1633 of 1993. This suit was filed by the husband seeking divorce against the Respondent. An ex-parte order was passed in that suit. The Respondent had filed an Appeal, being Appeal No.490 of 1995 against the said order to the Division Bench. That Appeal was allowed to be withdrawn by the Respondent. Liberty was granted to the parties to raise all contentions which were raised,before the learned Single Judge who passed the Decree Nisi as per Rule 814 of the High Court (O.S.) Rules. It is therefore the contention of the Respondent that this suit is still pending and therefore filed the aforesaid Notices of Motion in this Court.

4. However, the learned Counsel for the petitioner

pointed out the decision of the Division Bench of this Court in the case of Maria Sera Pinto vs. Milton Dias reported in 2001(1) Bom.C.R.585 to submit that this petition is only pending for the purpose of Rule Nisi to be made absolute and for no other purpose and in view of the decision of the Division Bench, all matrimonial matters between the parties can be filed only in the Family Court.

5. The relevant observations of the Division Bench are as under :-

"14. In conclusion, we hold as under :- (a) All petitions under the Indian Divorce Act in which a decree nisi has already been made prior to the date of the judgment of the Full Bench in Romila Jaidev Shroff (i.e. 5.5.2000), shall continue to be dealt with and disposed of in accordance with the provisions of section 16 of the Indian Divorce Act by being placed before a learned Single Judge for being made absolute.

(b) All other petitions and proceedings which were at a stage prior to decree nisi, as on 5.5.2000, shall stand transferred automatically to the Family Court. The

Family Court shall deal with such proceedings in accordance with the provisions of the Family Court Act, 1984.

(c) In respect of matters which had arisen under the Indian Divorce Act, 1869 and stand transferred to the Family Court with effect from 5-5-2000, there shall be no need for the decree of the Family Court to be confirmed as contemplated under sections 17 and 20 of the Indian Divorce Act. The provisions of section 19 of the Family Court Act dealing with appeals shall be applicable to them also."

This being the position, the matters which were pending in High Court upto the decision of the Full Bench rendered on 5-5-2000 were pending only for the purpose of passing the decree Nisi and nothing more. The Division Bench clearly pointed out that all other petitions and proceedings which were at the stage prior to the Decree Nisi shall stand transferred automatically to the Family Court and the Family Court shall deal with such proceedings in accordance with the provisions of the Family Court Act, 1984. This, of course, makes it clear that the inherent

jurisdiction for entertaining all family matters under the Family Court Act could be filed in the Family Court and not in the High Court. Insofar as the proceedings pending in the High Court are concerned, they will remain pending in the High Court only for the purpose of making the decree Nisi absolute and all other matters pending in the High Court be transferred to the Family Court. Therefore, it is further clear that whatever new matters are to be filed shall have to be filed in the Family Court an not in the High Court.

6. By these two Notices of Motion, the Respondent is claiming maintenance and return of property. These matters shall lie in the Family Court under the Family Court Act and not in the High Court in view of the aforesaid decision of the Division Bench. Therefore, these Notices of Motion cannot be entertained. The view taken by the Family Court Judge is erroneous. He shall have to entertain the applications for maintenance as well as return of property made by the Respondent.

These Notices of Motion are, therefore, disposed of accordingly.

Certified copy expedited.

(S.K.SHAH,J.)